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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES OF AMERICA,

Petitioner,

vs.

ALBERT ROSS, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AND THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Rex E. Lee, Solicitor General of the United States, Counsel for Petitioner, and William J. Garber, Esq., Counsel for Respondent. Letters of Consent of both parties have been filed with the Clerk of this Court.

INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* thirty-six times in the Supreme Court of the United States, and twenty-eight times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

AELE and IACP well know the problems faced by police officers in their good faith attempts to conduct searches and seizures that comport with the myriad of rules and exceptions that have been judicially engrafted upon the Fourth Amendment. The state of this intricate complex of rules as applicable to the search of automobile trunks compels these organizations to speak on behalf of law enforcement officers in this case.

ARGUMENT

I.

THIS COURT SHOULD CLEAR AWAY THE INCOMPREHENSIBLE DISTINCTIONS EXISTING IN THE RULES FOR WARRANTLESS SEARCHES OF AUTOMOBILES AND ADOPT A BRIGHT LINE RULE FOUNDED UPON THE ORIGINAL PURPOSE AND INTENT OF CARROLL V. UNITED STATES THAT CAN BE UNDERSTOOD AND APPLIED BY POLICE OFFICERS

Americans for Effective Law Enforcement has been privileged to file, as noted, many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *International Association of Chiefs of Police.* Those briefs always presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, for reasons that follow, we are dispensing with any extended analysis of the case law. We confine our brief essentially to a suggested resolution of the perennial police dilemma caused by the intolerable confusion that confronts them as they must determine what containers within an automobile they can or cannot search—*after having already made an accurate judgment as to probable cause to search the vehicle itself.*

We urge the Court to adopt a rule which would permit the search of all containers found in a vehicle when the prerequisites for a search of the vehicle itself have been satisfied, as prescribed in *Carroll* v. *United States,* 267 U. S. 132 (1925). We will suggest only one qualification which, in view of the limited types of motor vehicles available at the time of the *Carroll* decision, did not receive consideration from the Court in that case.

The decisions which protect some containers from searches while allowing others to be searched are based upon the test of "reasonable expectation of privacy." That test evolved in *Katz* v. *United States,* 389 U. S. 34 (1967), in which the Court concerned itself only with the question of whether a search had actually occurred within the meaning of the Fourth Amendment. It might seem highly irrational, therefore, to hold that a search occurs in violation of the Fourth Amendment when the police make a non-consensual inspection of a suitcase found in an automobile, but that no search occurs when the police inspect a paper bag found in the vehicle. The issue should only be whether the search was reasonable. It is impractical, and of no guidance to the police, to make the reasonableness of a search of a container depend upon the precise degree of privacy expectation with respect to each such container.

There are myriad grades of expectation of privacy, just as there are myriad grades of police intrusion. This Court has indicated in *Dunaway* v. *New York,* 442 U. S. 200 (1979), that the police need fixed standards and that a sliding scale approach with an infinite number of gradations is unsatisfactory. The citizen is better protected if the officer clearly knows what is permissible and what is not.

The "expectation of privacy" test in automobile search and seizure cases offers no satisfactory guidance to the police with respect to containers within the vehicle. It does not provide an understandable distinction between a paper bag and a leather pouch. Nor does it distinguish between a glove compartment or the trunk of the car; or between a station wagon and an ordinary passenger car. The Court apparently thought it was doing that in *Robbins* v. *California,* ____ U. S. ____ (1981), and *New York* v. *Belton,* ____ U. S. ____ (1981), but what the police need is understandable guidance rather than esoteric distinctions which are meaningless to them.

Requiring the police to pursue the only available safe sure investigative practice of seeking a search warrant for the

examination of containers or for searching closed portions of a car produces several unfavorable consequences. First of all, where there is probable cause to search an automobile—and this is the premise for all we suggest—a magistrate will rarely refuse to issue a warrant. In such instances police compliance with a formality may be viewed as a satisfaction of the majesty of the law, but the price for this unnecessary reward is an unaffordable one. It is unaffordable not only in terms of police service but also as regards the judicial system as well.

Secondly, police time is desperately needed for the detection and prevention of crime, and for the apprehension of dangerous offenders. The time needed for the procurement of a warrant to search the contents of a car could be better devoted to those purposes. Several hours may be required for a police officer to draft and present in court a search warrant application and a proposed search warrant. Meanwhile, another officer has to spend his time securing the vehicle. Then, too, in rural areas an even longer period of time may be required to obtain a warrant. Thirdly, as this Court knows all too well, the judiciary is greatly overburdened with cases awaiting determinations of guilt or innocence, and they have precious little time to spend on formality compliances.

In addition to wastage of police and court time, consideration is in order for the motorist whose vehicle containers do not in fact contain illegal evidence, irrespective of the existence of probable cause for the search. An on-the-scene search would have conserved his time as well as that of the police and the court. This was one of the considerations underlying the Court's decision in *Chambers* v. *Maroney*, 399 U. S. 42 (1970), which re-affirmed the right of officers to make a warrantless search under the *Carroll* doctrine.

We urge the Court to adopt a rule in automobile search cases comparable to that applicable to the search of an arrested person. Of him a full search is permissible, regardless of whatever expectations of privacy he may have had as to the

contents of his pockets. A clear cut pronouncement should be made by the Court that *once there is probable cause to search a car, the police may search any container within any part of the car.* The only qualifications to the rule should be that if the vehicle is used for residential purposes—*e.g.*, a house trailer or camper—its containers may be searched only pursuant to a search warrant, absent exigent circumstances. As to the exclusionary rule in this type of case, and, in fact, all others, exceptions should be made for good faith mistakes by police officers.

If the police abuse the suggested container—search privilege, there are adequate available legal remedies, criminal and civil. Then, too, the force of public opinion is a factor that should not be overlooked, especially in this type of case where the Court has granted a guide-lined privilege urged upon it by the police themselves.

CONCLUSION

Amici respectfully submit that the decision of the United States Court of Appeals for the District of Columbia Circuit should be reversed on the facts and law, and on the basis of sound judicial policy.

Respectfully submitted,

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